REMARKS

Claims 1-15 and 20-34 are pending in the application.

Claims 1-14, 20-32 and 34 have been rejected.

Claims 15 and 33 are objected to.

Claims 1, 2 and 20 have been amended, as set forth herein.

I. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Widegren (US Patent No. 6,374,112).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986).

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Yamato (US Patent No. 5,694,390).

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and further in view of Campbell (US Patent Application Publication 2003/0140159).

Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) in further view of Geagan III (US Patent No. 6,263,371).

Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) and Geagan (US Patent No. 6,263,371) and in further view of Thorson (US Patent No. 4,440,986).

Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986), and in further view of Campbell (US Patent Application Publication 2003/0140159)..

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467

(1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

To further prosecution, independent Claims 1, 2 and 20 have been amended to recite <u>at least a one of reconfiguring a switching matrix within the network and reducing a number of channels in the network</u> (and certain language regarding the reduction of the size of voice packets has been deleted). Support for these amendments may be found in the Specification, page 13, line 18 through page 14, line 4. Thus, when the measured parameter (stored value) differs from a predetermined parameter (predetermined value) - indicating QOS issues such as congestion - bandwidth optimization is enabled (or an optimization mechanism adjusts the bandwidth) which includes at least a one of reconfiguring a switching matrix in the network and reducing the number of channels in the network. Constantin does not appear to reconfigure a switching matrix, as that term is utilized and defined in the present application <u>or</u> reduce a number of channels in the network.

Constantin allocates resources along a path through a network in response to a connection request message. Constantin, Abstract. In general terms, using cell delay calculations, if each successive resource element in the prospective path meets the delay budget, that resource element and path are utilized for the connection; if not, other paths are explored. See Constantin, generally. Thus, Constantin teaches, generally, determining and finding a path through a plurality of resource elements that meets the required delay budget. Constantin simply allocates the resource elements in order to stay within the delay budget. Col. 7, lines 1-3. If the delay budget cannot be met, the connection request is not forwarded -- no connection is made. Constantin does not appear to describe or disclose reconfiguring a switch matrix in the network or reducing the number of channels in the network. Though Constantin makes no connection when the delay budget cannot be met, Applicant respectfully submits that this is not equivalent to "reducing" the number of channels in

the network. Constantin merely does not allow a connection to proceed, and no reduction in the number of channels is implemented. Failing to establish a new connection is not equivalent to "reducing" the number of channels.

Neither Daniel, Widegren or Thorson appear to disclose these newly recited features/elements. Accordingly, the proposed combinations for rejecting independent Claims 1, 2 and 20 do not disclose, teach or suggest every element/feature recited in the claims. Therefore, the Applicant respectfully requests withdrawal of all of the § 103 rejections of independent Claims 1, 2 and 20 (and their dependent Claims 3-15 and 21-33).

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ***rmccutcheon@munckcarter.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,

MUNCK CARTER, LLP

Date: 3/9/2009

Robert D. McCutcheon
Registration No. 38,717

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3632 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *rmccutcheon@munckcarter.com*